IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of case

W.P. No. 129 (M/B) 2002

Date of decision: 17th November 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia.

Hon'ble Mr. Justice Rajesh Tandon.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

(Gurpreet)

P.A.

C.J's Court

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 129 (M/B) 2002

National Federation of Insurance field Workers of India,
having its Divisional Head Quarter at 7 Basant Vihar,
Chhoti Mukhani, Haldwani, Distt. Nainital,
Through its Divisional General Secretary
Sri R.C.S. Rana and another ---- Petitioners

Versus

Union of India,
through Secretary, Ministry of Finance,
Govt. of India, Central Secretariat,
New Delhi and others --- Respondents

Mr. Prashant Chandra / Mr. A.K. Joshi, learned Advocates for the Petitioners.
Mr. S.K. Posti, Advocate for the respondent No. 1 and 2.
Mr. Alok Mahara i/b Mr. Manoj Tiwari, Advocate for respondent No. 3.

Coram: Hon. S.H. Kapadia, C.J.,
Hon. Rajesh Tandon, J.

Date: 17th November, 2003

ORAL JUDGMENT: (Hon'ble S.H. Kapadia, C.J.)

1. By this writ petition the petitioners, namely National Federation of Insurance Field Workers of India have challenged the Notification dated 25th September 2001 issued by the Central Board of Direct Taxes (hereinafter referred to for the sake of brevity as C.B.D.T.).

2. **FACTS:**

The petitioners have challenged the Notification dated 25th September 2001 issued by Central Board of Direct Taxes. The Petitioners have challenged the Notification on four grounds. Firstly, on the ground that the impugned Notification is issued in purported exercise of power conferred on C.B.D.T. by Section 295 of the Income Tax Act read with Section 17(2) and Section 192 (2C) of the

Income Tax Act; that by virtue of the impugned Notification, C.B.D.T. has purported to supplement Section 17(2) of the Income Tax Act by incorporating amendments in the existing Income Tax Rules. Secondly, the impugned Notification is challenged on the ground of violation of Petitioner's Fundamental Rights under Article 14 of the Constitution. In this connection, it is contended that the impugned Notification is vague and arbitrary having no nexus with the object sought to be achieved. That it gives excessive powers to the I.T.O. to tax every item under a sum as a benefit without any guidelines. The third ground of attack to the impugned Notification is that by the impugned Notification, Rule 3 of the existing Income Tax Act has been substituted. That a new Rule has been inserted. That the impugned Rule was required to be placed before the parliament as mentioned in Section 295 read with Section 296 of the Income Tax Act and since, the impugned Rule has not been placed before the Parliament for approval, the impugned Rule violates Section 295 read with Section 296 of the Income Tax Act and therefore, the impugned Rule is bad in law. The last ground of attack is that the impugned Rule is brought into force with effect from 1.04.2001. That the liability cannot be imposed on assessee retrospectively. That the Notification is dated 25th September 2001 and the Rule is made effective from 1.04.2001 and therefore it is bad in law, arbitrary and vocative of the Petitioner's Fundamental Rights under Article 14 of the constitution.

Petitioner No. 1 is a union of employees of L.I.C. It was established in 1956. Petitioner No. 2 is a General Secretary of the Haldwani Division of the Union. Petitioner No. 1 is recognized by L.I.C. Members of Petitioner No. 1 and Petitioner No. 2 are adversely affected by the impugned Notification as it seeks to tax free / Concessional Educational facilities, Leave Travel Concession, Interest Free loan / Concessional loan given by L.I.C. to its employees, free meals, Club Membership, Club Expenditure etc. The Members of Petitioner No. 1 are the employees of L.I.C., which is a State within Article 12 of the Constitution. In this Petition, Petitioner No. 1 has also challenged the Circular dated 2nd March 2002 issued by L.I.C.

giving effect to the impugned Notification dated 25th September 2001 (hereinafter referred to for the sake of brevity as impugned Notification).

3. ARGUMENTS:

Mr. Prashant Chandra, learned Senior Counsel appearing for Petitioner No. 1, Association, Submitted that Petitioner No. 1 is a Federation of Development Officers of L.I.C. (Haldwani Unit). That the said Development Officers are public servants as they are employees of L.I.C., which is a State under Article 12 of the Constitution. In his arguments, he has categorized his challenge on the first ground by dividing the category of benefits into two parts. The impugned Notification seeks to tax numerous benefits provided to the employees of L.I.C. by L.I.C. However, it has been argued by the lenred Counsel that the main item covered by the impugned Notification is Interest Free loan / Concessional loan given to the Development Officers by L.I.C. vis-à-vis Other Facilities like free education, Leave Travel Concession, free meals etc.

As stated above, the first ground of challenge is that the impugned Notification issued by C.B.D.T. exceeds the power vested in C.B.D.T. under Section 295 read with Section 17(2) and Section 192 (2C) of the Income Tax Act. In this connection, it is argued that the Development Officers of L.I.C. gain business for L.I.C. They have an important role to perform. They are required to possess cars in order to go to places to canvass business for L.I.C. For this purpose, they are given, as and by way of conveyance facilities, certain benefits. They are given Interest Free loan/Concessional loan so that they can buy cars by which they can travel quickly and gain business for the Corporation. That essentially, L.I.C. gives such loans to Development Officers to facilitate their working. That earlier the cars stood in the name of the Corporation. But with the increase in the Road Tax liability, it was decided by the Corporation to permit the Development Officers to buy the cars in their own names by giving interest free loans to the Development Officers. That this as a business decision taken by the L.I.C. That the cars were hypothecated

to L.I.C. Hence, this facility was a part of service condition. Hence, it was a necessity. Hence, it could not be treated as a perquisite. It was further argued that Interest Free Loan / Concessional loan given by L.I.C. had no co-relation with Salary as defined under Section 17 of the Income Tax Act and further that such Interest Free loan / Concessional loan had no co-relation with the computation of Salary Income under the scheme of Section 15, 16 and 17 of the Income Tax Act. In this connection, reliance was placed by learned Counsel for the assessee on the judgment of the Supreme Court in the case of V.M. Salgaocar & Bros. Pvt. Ltd. V/s Commissioner of Income Tax reported in (2000) 5 Supreme Court Cases 373. It was submitted, relying on the above judgment, that Interest Free loan/Concessional loan was not a perquisite. That it was not a salary. That it had no co-relation with salary. That Interest Free loan / Consessional loan had no co-relationship with Section 15, 16 & 17 of the Act. That it has been so held by the above judgment, and therefore, it was not open to C.B.D.T, which was a rule making authority, to identify "Interest Free loan / Concessional loan" as a Fringe Benefit under Section 17(2)(vi) (as inserted by Finance Act, 2001) with effect from 1.04.2002. In this connection, it was further argued that under Section 17(2)(vi) the value of a Fringe Benefit /amenity had to be prescribed. It was argued that Parliament, in its wisdom, had delegated its authority to C.B.D.T. to value a Fringe Benefit / amenity. That, however, the Parliament had not authorized C.B.D.T. to identify Interest Free loan/ Concessional loan as a Fringe Benefit. It was argued that in the above judgment of the Apex Court in the case of V.M. Salgaocar & Bros. Pvt. Ltd. (supra), the Apex Court has ruled that Interest Free loan / Concessional loan is not a perquisite and if so, it was not open to C.B.D.T. to say that Interest Free loan / Concessional loan is a Fringe benefit. It was argued that C.B.D.T. was a rule making authority. That C.B.D.T. had to act within the parameters laid down by the Parliament under Section 17(2)(vi). That under Section 17(2)(vi) C.B.D.T. was not empowered to value the Fringe Benefit and C.B.D.T. was not empowered to identify Interest Free loan / Concessional loan as a Fringe Benefit. That under the circumstances,

C.B.D.T. had issued the Notifiction, which was not only contrary to Section 17(2)(vi) of the Income Tax Act, but it was also contrary to the judgment of the Apex Court in Salgaocar's case (supra). Hence, it was submitted that the impugned Notification exceeds the authority vested in C.B.D.T. under Section 295 of the Income Tax Act. It was argued that C.B.D.T. was empowered to make rules for carrying out the purposes of the Income Tax Act subject to the control of the Central Government. That under Section 295(1)(c) C.B.D.T. was entitled to make rules for determination of the value of any perquisite. However, C.B.D.T. was not entitled to identify any item as a Fringe Benefit. He argued that identification of any item as a Fringe Benefit was for the Parliament. Hence, the impugned Notification issued by C.B.D.T. enacting Rule 3 was issued in excess of the authority vested in C.B.D.T. under Section 17(2)(vi) read with Section 295(1)(c). In this regard, it was further argued that Section 192 of the Income Tax Act falls in chapter 17, which deals with collection and recovery of taxes. According to the learned Counsel, every employer is responsible for deducting T.D.S. from salary income and, on such deduction, such employer shall furnish a statement giving correct particulars of perquisites provided to their employee and the value thereof in such form as may be prescribed. That even under Section 192(2)(c) C.B.D.T. was required to prescribed only the value of perquisites and C.B.D.T. was not empowered to identify any item as a perquisite, which function was that of the Parliament. It was, therefore, submitted that the impugned Notification was issued by the C.B.D.T. in excess of its authority / without any authority and therefore, it was bad in law and it violated Section 17(2)(vi) read with Section 192(2c) and Section 295(1)(c). It was further pointed out that by Tax Law Amendment Act 1984, Section 17(2) and Section 40A of the Income Tax Act were amended. That by Tax Law Amendment Act 1984, the Parliament amended Income Tax Act and taxed Interest Free loan / Concessional loan to the employees for purposes of building a house / motor car under Section 17 (2)(vi) with effect from 1.04.1985. That by the same Tax Law Amendment Act 1984, Section 40A was also amended so as to put a ceiling on allowable deduction

claimed by the employers for giving Interest Free load/Concessional loan to employees. However, by Finance Act 1985, taxing of Interest Free loan/Concessional loan as perquisites was deleted. That clause vi of Section 17(2) was deleted. However, there was no deletion under Section 40A(5)(vi) and consequently, Section 40A(5)(iv) came before the Supreme Court in Salgaocar's case (supra), where it has been held that giving o Interest free loan/Concessional loan was not a perquisite. Therefore, it was argued that if the Apex Court has declared a particular item not to be a perquisite, it is not open to C.B.D.T. to over-rule the judgment of the Apex Court by issuing the impugned Notification. Hence, the impugned Notification should be struck down.

As stated above, apart from Interest Free loan / Concessional loan, C.B.D.T. has purported to tax "Other Items" like free education, Leave Travel Concession, free meals etc. In this connection, it was submitted that Clause viii of the impugned Notification is all pervasive. That under that Clause, every conceivable benefit under the sum could be taxed by the I.T.O. as a perquisite. It is argued that Clause viii confers excessive powers on the I.T.O. to treat any and every item as perquisite. That Clause viii is vague, unjust and unfair. It is, further argued that Rules are required to be framed by C.B.D.T. under Section 295(1) of the Income Tax Act. In this connection, it was submitted that under Section 295(1)(c) C.B.D.T. was required to make rules, which were proper and reasonable. It was argued that by giving excessive powers to I.T.O. under Clause viii of the impugned Notification, C.B.D.T. has violated Section 295(1)(c). It is further argued that while computing the value to be given to Interest Free loan / Concessional loan, C.B.D.T. has standardized the rate of interest at 10% and 13% respectively in respect of housing loans and other loans, which is unfair and unreasonable in the following interest market. It was submitted that H.D.F.C. has been giving loans for housing purpose at 8.25% and for other loans the interest charged by H.D.F.C. is 8.75%, whereas the I.T.O. is empowered under the impugned Notification to take into account interest at 10% and 13% respectively and that too, on the reducing balance and therefore, the

impugned Notification is unjust, unreasonable and violative of Section 295(1)(c). It was further argued that while issuing Notification, C.B.D.T. was required to consider the hardship on the salaried assesses particularly when it seeks to impose interest at 10% and 13% respectively on a reducing balance. Hence, on the second ground of attack, it was submitted that the impugned Notification was bad in law, vague, arbitrary, unreasonable and contrary to the provisions of Income Tax Act.

The third ground of challenge advanced on behalf of the Petitioners is that by the impugned Notification Rule 3 has been inserted in the Income Tax Rule under the caption "Valuation of Perquisites". The Notification has been followed by 22nd Amendment to the Rules. The said Rules have come into force with effect from 1.04.2001. It was argued that under Section 296 of the Income Tax Act, such rules and notifications were required to be placed before the Parliament. That Section 296 is a safeguard against the usurpation of legislative functions of the Parliament by the rule making authority i.e. C.B.D.T. It was argued that in the Petition, it has been alleged that Rules / impugned Notification was not placed before the Parliament. That there is no denial to this averment by the Revenue. It was, therefore, argued that Section 296 have been violative and consequently, the impugned Notification / Rule was non-est and void ab inition.

Lastly, it has been argued that the impugned Notification is dated 25th September 2001, but it has been brought into force with effect from 1.04.2001. In this connection, it was further submitted that Section 17(2)(vi) was inserted by Finance Act 2001 with effect from 1.04.2002 and consequently, it was not open to C.B.D.T. to issue the impugned Notification dated 25th September 2001 with effect from 1.04.2001. It was further agued that Clause vi was inserted in Section 17(2) by the Parliament by Finance Act 2001 with effect from 1.04.2002 and yet the impugned Rules 2001 have been brought into force with effect from 1.04.2001 and therefore, it is bad in law and contrary to Section 17(2)(vi). In this connection, it was argued that the liability cannot be imposed on the assessee retrospectively. That

the impugned Rules have been brought into force from 1.04.2001 when Clause vi of Section 17(2) of the Income Tax Act came into force by Finance Act 2001 with effect from 1.04.2002. Therefore, the Rule was bad in law and liable to be struck down.

Per contra, Mr. Posti, learned Counsel for the Department, contended that the word " Salary" has been defined under Section 17(1) of the Income Tax Act. That it includes pension, gratuity, fees etc. that the word " Salary" is defined under Section 17(1). That it has an inclusive definition. That similarly section 17(2) defines the word "Perquisite" to include value of rent free accommodation, value of any benefit or amenity given to the employee either free of cost or at concessional rate, the value of any other fringe Benefit or amenity as may be prescribed. Mr. Posti, learned Counsel for the Revenue argued that under Section 17(2)(vi), the C.B.D.T. is authorized not only to prescribe the value of any other Fringe Benefit, but it is also authorized to identify any benefit or amenity as fringe Benefit/ amenity. He emphasized the words "as may be prescribed" and he contended that this expression "as may be prescribed" is very relevant. It indicates that C.B.D.T. is authorized not only to prescribe the value of a perquisite, but it is also authorized to identify any benefit or amenity as a Fringe Benefit. In this connection, he invited our attention to Section 2(33), which defines the word " Prescribe" to mean as prescribed by the rules made under the Act. He also placed reliance on Section 2(12), which defines the Word "Board" to mean C.B.D.T. constituted under Central Board of Revenue Act 1963. He further contended that C.B.D.T. is empowered to frame rules under Section 295 (1). He also invited our attention to Section 15 and Section 16 of the Income Tax Act and he contended that Section 15, Section 16 and Section 17 should be read together and if they are read together, it is clear that Interest Free loan / Concessional loan and other free benefits / amenities like free meals, free education, credit card facilities etc. have co-relation with the word "Salary". He further contended that salary is one of the heads of Income. That under Chapter IV, one of the heads of Income is Salary. That Chapter IV covers Section 15, 16 & 17. Hence, he argued that Interest Free loan/

Concessional loan do have co-relationship with salary. He also invited our attention to the speech delivered by the Finance Minister at the time of introduction of the Finance Bill 2001 under which, he proposed to insert Clause vi to section 17(2) so as to give an authority to C.B.D.T. to determine the value of Interest Free loan / Concessional loan on the basis of its cost to the employer. He, therefore, contended that there is no merit in the argument advanced on behalf of the Petitioners that no policy has been prescribed by the Parliament while enacting / inserting Clause vi in Section 17(2) of the Income Tax Act and that C.B.D.T. has framed rules in excess of its authority. In this connection, he relied upon the judgment of the Karnataka High Court in the case of BHEL Employees Association V/s Union of India & Others reported in 261 I.T.R. 15. He also relied upon the judgment of the Supreme Court in the case of Lohia Machines Ltd. & another V/s Union of India & Others reported in 152 I.T.R. 308. He, therefore, contended that there is no merit in the first ground of attack advanced on behalf of the petitioners to the validity of the Rules/ Notification.

Mr. Posti, further contended that C.B.D.T. was empowered to prescribe rules not only for Interest Free loan / Concessional loan, but it was also empowered to enact rules for all other Fringe Benefits and therefore, C.B.D.T. has valued each of the other benefits given to the employees like free meals, free education for children, free club membership, Leave Travel Concession etc. He contended that no factual basis is alleged by the Petitioners to show tat the interests on loans given by H.D.F.C. was 7.75% (for housing loans to salaried persons) and 8.25% for other loans. He argued that, in fact, the lending rates of Nationalised banks is more than 10% and 13% respectively and therefore, the impugned Notification is not arbitrary, unreasonable & unjust and it is in consonance with Section 295(1)(c). He further argued that the judgment of the Supreme Court in Salgaocar's case (supra) has not application to the facts of the present case. He contended that when the Apex Court decided the matter in Salgaocar's case (supra), there was no provision similar to Section

17(2)(vi) and therefore, that judgment has not application to the present case.

Mr. Posti, next contended that the Notification and the Rules have been placed before the Parliament before the Amendment came to be made in the Income Tax Rules. In this connection, he relied upon the judgment of the Karnataka High Court in the above case of BHEL Employees Association (supra) and, therefore, there was no violation of the provision of Section 296 of the Income Tax Act.

Mr. Posti next contended that the Finance Act 2001 came into force with effect from 1.04.2002. He contended that under the income Tax Act, one has to go by the Assessment Year relevant to the previous accounting year. He argued that the Finance Act 2001 specifically applied the amended law with effect from 1.04.2002 i.e. for Assessment Year 2002-03 relevant to the previous year ending 31st March 2002 and therefore, there was no retrospective operation of the impugned Rules/ Notification as alleged. In this connection, he relied upon the judgment of the Karnataka High Court in the case of BHEL Employees Association (supra), which has held that there was no retrospective effect given by the impugned Rules/ Notification. Mr. Posti, therefore, contended that there is no merit in the Writ Petition.

4. POINTS FOR DETERMINATION:

I. Whether C.B.D.T. exceeded its authority in issuing the impugned Notification and whether C.B.D.T. usurped the essential legislative functions of Parliament in issuing the impugned Notification?

II. Whether the impugned Notification violated provisions of Section 17(2)(vi) by identifying Interest Free Loan, Leave Travel Concession, Free Meals, Club Membership etc. as Fringe Benefits under Section 17(2)(vi)?

III. Whether Clause 8 of the impugned Notification is arbitrary, unreasonable, vague and violative of Article 14 and whether by the said Notification excessive powers have been given to the I.T.O. to tax any and every benefit/ amenity as Fringe

Benefit under Section 17(2)(vi)? Whether it is in breach of section 295(2)(c) of the Income Tax Act?

IV. Whether the impugned Notification / Rule is bad in law of non-compliance with provisions of Section 296?

V. Whether the impugned Notification / Rule which came into force with effect from 1.04.2001, when Finance Act (2) of 2001 has come into force with effect from 1.04.2002, was retrospective and therefore bad in law?

5. FINDINGS:

Issue No. 1:

At the outset, we may point out that validity of Section 17(2)(vi) has not been challenged. Hence, we do not wish to go into the arguments advanced on behalf of the Petitioners that no policy is stipulated by the Parliament while enacting Section 17(2)(vi). Taxable salary, under the scheme of Section 15 & 16, includes the value of any benefit or amenity granted or provided free of charge or at concessional rate by the employer. The word "Salary" is defined under Section 17(1). It is an inclusive definition. Similarly, the word " perquisite" is defined under Section 17(2). It is also an inclusive definition. The Word "Perquisite" covers value of rent free accommodation, the value of any benefit or amenity granted or provided free of cost or at concessional rate in certain stipulated cases [See Section 17(2)(iii)]. Accordingly, free medical facility provided to the employees was required to be included in the taxable income. However, in view of circulars of C.B.D.T., the value thereof to a certain extent was not taxable. This was the position at one point of time. Now even the section has been amended. But even here, circulars have to be issued enlisting the diseases & hospitals for claiming exemption. The point is mentioned only to show that the function of C.B.D.T. under Section 295(1) of the Income Tax Act is not only to frame rules evaluation the benefit or amenity, but also to itemize such benefits or amenities. In this connection, it may be noted that under Section 295(1) C.B.D.T. is empowered to make rules to

carry out the purpose of the Act. Further Section 15, 16 & 17 all fall under Chapter IV, which deals with computation of total income. Under Section 14, all incomes have to be classified under various Heads to charge and compute income tax. That Section 15 is the charging section in respect of salary income, whereas Section 16 & 17 help the Department in computing such income. Moreover, Section 17(2)(iii) refers to value of any benefit or amenity provided free of cost by the employer. However, there were numerous disputes pending in various High Court not only on valuation but also on identification of benefit or amenity. In some cases, it was argued that small benefits like Club Membership and Credit Card facilities did not constitute any substantial benefit. To put an end to such conflicts, parliament inserted Clause (vi) in Section 17(2) by Finance Act No. (14) of 2001 with effect from 1.04.2002 by stating that even the value of any other Fringe Benefit as may be prescribed by C.B.D.T. be included with " Perquisite" as defined under Section 17(2). The words "as ay be prescribed" not only refer to value, but also to itemization / identification of a particular benefit or amenity. Hence, the entire policy of the Parliament is to cover all types of benefits / amenities, including substantial and fringe benefits within the word "Perquisite". This policy is discernible from the scheme of Section 14, 15, 16 & 17 of the Income Tax Act. Further the legislature has left it to C.B.D.T. as C.B.D.T. is an expert Rule making authority. The concept of perquisite, so as to include benefit, can be understood, but not defined. Hence, legislature has left it to C.B.D.T. to define the benefit or amenity and to assign it a value so that the later could form part of Total Income (See judgment of Supreme Court in Lohia machine Ltd. & another V/s Union of India & Others reported in 152 I.T.R. 308). Hence, we do not find any merit in the argument advanced on behalf of the assessee that Interest Fee loan / Concessional loan has no co-relation with the word " Salary" and that the legislature has not indicated any policy while enacting Section 17(2)(vi) and that C.B.D.T. had usurped the legislative function of the Parliament in enacting the impugned rules.

Issue No. 2.

It has been argued before us that Interest Free loan / Concessional loan has no co-relationship with " Salary" as defined under Section 17(1) read with Section 15 & 16 of the Income Tax Act. We do not find any merit in this argument. Under Chapter IV of the Income Tax Act we have computation of total income under various heads, one such head being " Salary". Salary is defined under Section 17(1). It is an inclusive definition. While computing taxable income under the Head " Salary" the value of rent free accommodation and the value of any other benefit or amenity has to be taken into account [see Section 17(2)(iii)]. However, in addition to Section 17(2)(iii) the legislature has introduced Section 17(2)(vi) to cover Fringe Benefits vis-à-vis substantial benefits. The judgment of the Supreme Court in Salagaocar's case (supra) has no application as it was not under Section 40A(5), the object of which is different i.e. not to allow Companies to claim dedcuations beyond the prescribed limit. Lastly, the purpose of C.B.D.T. in issuing the impugned Notification is to guide the concerned Assessing Officers, who have to calculate the value of such fringe benefits and amenities while computing the total income of the assesses. It may be mentioned that with globalization new concepts are coming into the economy. That new terms and conditions of payment of salaries are introduced. That new benefits and amenities are being introduced by multinationals to attract younger talent. Hence, one cannot exhaustively define fringe benefits. Hence, the legislature has left it to C.B.D.T. to prescribe and identity these benefits. It is for C.B.D.T. to issue Circulars from time to time to carry out the purpose of the Act. Interest Free loan / Concessional loan is a benefit or amenity. In ordinary course, an employee is required to borrow at market rates, but in case of Interest Free loan / Concessional loan, he is not to pay interest at market rate. Hence, to this extent, his liability is discharged by the employer. Hence, it is a perquisite. Same is the case with Leave Travel Concession, Club

Membership, free meals etc. Hence, Interest Free loan / Confessional loan has a nexus with the scheme of Section 15, 16 & 17 of the Income Tax Act.

Issue No. 3 &4.

We do not find any merit in the argument of the petitioners that the impugned Notification / Rule is vague & arbitrary and that it gives excessive powers to I.T.O.s. Firstly, concepts like Fringe Benefits are difficult to define. Secondly, they can never be exhaustively defined and therefore the legislature has left it to C.B.D.T. Thirdly, Clause 8 of the impugned Notification shows that C.B.D.T. has not defined fringe benefits exhaustively. It has felt that even after covering various items of benefit some may be left out and therefore Clause 8 is a Residuary Clause, which empowers the I.T.O. to treat a benefit or amenity as a perquisite if not enlisted in earlier clause. Hence, the impugned Notification is not vague, unreasonable and arbitrary as alleged.

Here it may be further mentioned that according to the Petitioners, Rule 3(7) values the Interest Free loan / Concessional loan borrowed for housing at 10% and for other purposes at 13% which is excessive in the falling interest market. It was argued that Personal Loans are given by H.D.F.C. at rates lower than 10% and yet C.B.D.T. has valued such loans at 10%. However, by counter C.B.D.T. ha stated that they are considering this aspect. Be that as it may, C.B.D.T. can always be moved by Association/Unions with appropriate representations in his regard as C.B.D.T. is empowered under Section 295 to issue Circulars as and when interest rates stand reduced. Lastly, the power of C.B.D.T. under Section 295(1) to make rules is subject to further safeguard of the rules being placed before the Parliament under Section 26 of the Income Tax Act. Hence, there is not merit in the above arguments. Hence, the impugned Notification is in accordance with Section 295(2C) and Section 296(1) of the Income Tax Act. Lastly, it may be mentioned that Rule 3 was placed before the Parliament as indicated by Income Tax (XXII Amendment) Rules 2001 with effect from 1.04.2001. In the counter

affidavit filed by the Department, averment is made to the effect that the impugned Notification amending Rule 3 of Income Tax Rules was placed before the Parliament under section 296 of the Income Tax Act on 7th December 2001 in the Lok Sabha and on 18th December 2001 in the Rajya Sabha. Therefore, there is no merit in the argument of the petitioners that the amended Rule 3 was bad in law for non-compliance of section 296(1) of the Income Tax Act. However C.B.D.T. is directed to consider lower rate ginterest in valuing fringe benefits in line with market rates of interest.

Issue No.5

It is argued on behalf of the Petitioners that the impugned Notification/ Rule is bad in law as it is retrospective, that no liability could be imposed retroactively. We do not find any merit in this argument. It is true that Section 17(2)(vi) was introduced by Finance Act of 2001 with effect from 1.04.2002. Hence, it covers Assessment Year 2002-03 relevant to accounting year ending on 31.3.2002. Hence, the impugned Notification with effect from 1-4-01 is not retrospective as alleged (See 59 I.T.R. 666).

6. For the aforestated reasons, there is no merit in the Writ Petition. The Writ Petition is dismissed. No order as to costs.

(Rajesh Tandon, J.) **(S.H. Kapadia, C.J.)**

Gur